

**AB 2266 (Kelley) - Municipal Utility Districts
As Amended April 2, 2002**

Recommendation: Oppose. The Energy Division finds some material to like in the bill particularly the application of the Federal Energy Regulatory Commission (FERC) uniform system accounts to municipal utility districts and the extension of “anti-poaching” restrictions to municipal utility districts (MUDs).

Summary:

Restricts municipal utility districts (MUDs) that are not providing electric service on January 1, 2003 from providing electric service within the service territory of CPUC-regulated electric utility by creating a number of procedural and substantive obstacles.

Specifically, the bill

- Requires a district-wide election before electric service can be provided (proposed Public Utilities Code (PU Code) section 12828(a));
- Prohibits the use of MUD funds derived from services other than electricity for any purpose related to the electric service (proposed PU Code section 12828(b));
- Requires a MUD to use FERC-approved accounting (proposed PU Code section 12828(c));
- Prohibits a MUD from offering service outside its boundaries until it has offered service to all customers within its district boundaries (proposed PU Code section 12829(f));
- Requires a CPUC order approving service (proposed PU Code section 12829(c)), based on findings after a hearing on the following issues:
 - The MUD will provide universal service within the territory to be served (proposed PU Code section 12829(c)(1));
 - The MUD will provide service at a rate that is at least 15 percent below the utility tariffed rate (proposed PU Code section 12829(c)(6));
 - The net unavoidable costs of power procurement by the utility and by the DWR will not be shifted to remaining utility customers (proposed PU Code sections 12829(c)(7) and (8));
 - There will be no adverse effect on reliability (proposed PU Code section 12829(c)(4));
 - There will be no waste through duplication of facilities (proposed PU Code section 12829(c)(3));
 - The MUD has provided public purpose and low income programs “comparable to those” provided by the electric utility (proposed PU Code section 12829(c)(5));
 - The area to be served – whether wholly within or partially outside the MUD’s service area – includes a percentage of residential and small commercial customers that is comparable to the percentage within the MUD’s service area or the counties where service is to be provided (anti-cherry picking) (proposed PU Code section 12829(c)(2));

- Confers jurisdiction on the CPUC to resolve complaints involving customers located outside the boundaries of the MUD.

Analysis:

This bill is sponsored by PG&E. It places new substantive restrictions on the exercise of existing statutory authority by existing MUDs to provide electric service. Under current law MUDs are established by a vote of the electors in the proposed district. Once established, the district may own facilities and provide light, power and/or heat service "...within or without, or partly within or partly without, the district" to "...the inhabitants of the district or public agencies or some of them...." PU Code section 12801. This bill requires a second election, imposes new restrictions on the use of MUD funds, and requires service to all inhabitants within the MUD before offering any services to customers outside the MUD boundaries. It also requires an affirmative order of the CPUC, notwithstanding the vote of the district voters, approving the proposed service, which – given judicial review – could delay the effect of a vote for years.

In the context of the PG&E bankruptcy proceeding, where PG&E is proposing to substantially double the costs of providing electric service from its existing generating facilities pursuant to a long-term contract after facility divestiture, this appears to be an attempt by PG&E to restrict an existing form of consumer self-help – the utilization of MUD resources -- to protect them from the proposed cost increases. Consumer self-help will not be as significant an issue if the CPUC's alternative plan, that applies cost-of-service ratemaking to PG&E generation facilities, is approved by the Bankruptcy Court.

In AB 2638 (Stats. 2000, ch. 1042) the Legislature provided a role for the CPUC in addressing issues that arise in proposals for electric service by irrigation districts to utility customers, acting under authority granted to them in the Water Code. PU Code sections 9607 and 454.1. AB 2638 established the dispute resolution role for the CPUC in the context of transfers of facilities and service entered into voluntarily between irrigation districts and utilities. This bill describes a similar role for the CPUC in the MUD context, where there is no history either of "poaching" or of voluntary transfers of customers. However, to the extent that the CPUC order under AB 2266 can have the effect of nullifying the votes of the district's voters in the second election, it places the CPUC in a fundamentally different position – adverse to the consumer/residents who voted in favor of the new electric service -- than do the voluntary dispute resolution provisions of AB 2638.

The "public interest" considerations in AB 2266 are comparable to those in AB 2638. The good offices of the CPUC in making these determinations will implicate ALJ and Energy Divisions' resources.

Legislative Staff Contact:	Sazedur Rahman, Program & Project Supervisor CPUC-Water Division Bill Julian, Legislative Director CPUC- OGA	snr@cuc.ca.gov (415) 703-1748 bj2@cpuc.ca.gov (916) 327-1407
-----------------------------------	---	--

Date: April 15, 2002

Bill Language

BILL NUMBER: AB 2266 AMENDED

BILL TEXT

AMENDED IN ASSEMBLY APRIL 2, 2002

INTRODUCED BY Assembly Member Kelley

FEBRUARY 20, 2002

~~An act to amend Section 31149.2 of the Water Code, relating to county water districts.~~ *An act to add Sections 12828 and 12829 to the Public Utilities Code, relating to public utilities.*

LEGISLATIVE COUNSEL'S DIGEST

AB 2266, as amended, Kelley. ~~County water districts: hydroelectric power~~ *Municipal Utility Districts*

~~Existing law, the County Water District Law, authorizes a county water district to construct, maintain, and operate hydroelectric powerplants and transmission lines. That district law authorizes a county water district to lease those plants and transmission lines for operation by a public utility or public agency engaged in the distribution, use, or sale of electricity. This bill would make technical, nonsubstantive changes to those provisions.~~

(1) Existing law, the Municipal Utility District Act, authorizes any public agency together with unincorporated territory, or two or more public agencies, with or without unincorporated territory, to organize and incorporate as a municipal utility district. A district may acquire and control works or parts of works for supplying the inhabitants of the district and public agencies with power, among other things.

This bill would authorize a district, if a public utility regulated by the Public Utilities Commission is providing electric distribution service within the territory of the district, to furnish electric distribution service within the territory served by the public utility upon submission of the issue as a separate proposition at any election and approval of the voters within the entire

district. The bill would prohibit a district from loaning, financing, financially supporting or otherwise subsidizing the provision of electric service, or the district's entry into the electric business, from funds received, or reserves established, by the district for or in connection with any service other than electric service. The bill would require a district providing electric service to maintain its accounting books and records in conformance with the Federal Energy Regulatory Commission's approved Uniform System of Accounts for utilities.

This bill would prohibit a district from constructing, leasing, acquiring, installing, or operating facilities for the distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution services, unless the district has first applied for and received the approval of the Public Utilities Commission and implements its service consistent with the commission's order. The bill would require the commission to make a finding that the service is in the public's interest and to approve the request of a district to provide distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution service if, after notice and hearing, the commission makes certain determinations with regard to the rates for the district's service, the area the district is proposing to serve, the avoidance of economic waste caused by duplication of facilities, the avoidance of shifting of net unavoidable costs of power procurement by an electrical corporation to the electrical corporation's remaining customers, the avoidance of shifting of net unavoidable costs of power procurement by the Department of Water Resources, as defined, to the electrical corporation's remaining customers, and the public's interest. The bill would require a district that obtains the approval of the commission to serve an area to prepare an annual report available to the public on the total load and number of accounts of residential, low-income, agricultural, commercial, and industrial customers served by the district in the approved service area. The bill would grant the commission jurisdiction to resolve and adjudicate complaint cases brought against a district by an interested party concerning retail electric service outside the boundaries of the district and within the service territory of an electrical corporation. The bill would provide that its provisions do not grant the commission jurisdiction to adjudicate complaint cases involving retail electric service by a district inside its boundaries. The bill would prohibit a district from offering service to customers outside of its district boundaries before offering service to all customers within its district boundaries. The bill would provide that its provisions do not apply to any district providing electric distribution service as of January

1, 2003. Since a violation of an order of the commission is a crime under existing provisions of law, the bill would create a state-mandated local program by expanding the definition of a crime.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee:

~~no~~ yes . State-mandated local program:

~~no~~ yes .

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

~~SECTION 1. Section 31149.2 of the Water Code is amended~~

SECTION 1. The Legislature finds and declares the following:

(a) In recent years the electric power industry has been in the midst of a crisis, with wholesale power prices subject to increasing volatility.

(b) In 2000, a combination of regional electricity demand growth, unseasonably hot weather, and drought-depleted hydroelectric resources created a tight electricity supply situation within California and the Western region that was exploited by the exercise of market power by marketers and generators, under the jurisdiction of the Federal Energy Regulatory Commission, to create enormously high wholesale electricity prices.

(c) This volatility has created financial problems for public and private utilities alike.

(d) It is important that municipal utility districts not currently in the electric business retain the authority to enter into the electric business if their directors and constituents approve of the venture, but, given the increasing risk profile of the electric industry, it is increasingly important that the decision be made only after approval of the voters within the district's boundaries and that the venture not be cross-subsidized by the district's other services and other customers.

SEC. 2. Section 12828 is added to the Public Utilities Code, to read:

12828. (a) This section does not apply to any district providing electric distribution service as of January 1, 2003.

(b) If a public utility regulated by the commission is providing

electric distribution service in all or a portion of a district, the district may not furnish electric distribution service within the territory served by the public utility except upon approval of the voters within the entire district. The question of whether the district should provide electric distribution service shall be submitted as a separate proposition at any election. If the question is defeated at the election, for one year thereafter no new election may be called upon the question.

(c) A district may not loan, finance, financially support or otherwise subsidize the provision of electric service, or the district's entry into the electric business, from funds received, or reserves established, by the district for or in connection with any service other than electric service.

(d) A district providing electric service shall maintain its accounting books and records in conformance with the Federal Energy Regulatory Commission's approved Uniform System of Accounts for utilities, as may be modified or amended from time to time.

(e) For the purposes of this section, "commission" means the Public Utilities Commission.

SEC. 3. Section 12829 is added to the Public Utilities Code, to read:

(a) This section does not apply to any district providing electric distribution service as of January 1, 2003.

(b) The intent of this section is to avoid cost-shifting to customers of an electrical corporation resulting from the provision of distribution services by a district.

(c) A district may not construct, lease, acquire, install, or operate facilities for the distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution services, unless the district has first applied for and received the approval of the commission and implements its service consistent with the commission's order. The commission shall find that service to be in the public interest and shall approve the request of a district to provide distribution or transmission of electricity to retail customers located in the service territory of an electrical corporation providing electric distribution service if, after notice and hearing, the commission determines all of the following:

(1) The district will provide universal service to all retail customers who request service within the area to be served, at published tariff rates and on a just, reasonable, and nondiscriminatory basis, comparable to that provided by the current retail service provider.

(2) The area the district is proposing to serve is either of the following:

(A) Within the district's boundaries but less than the entire

district, and the area to be served includes a percentage of residential customers and small commercial customers, based on load, comparable to the percentage of residential and small commercial customers in the district, based on load.

(B) Includes territory outside the district's boundaries, in which case the territory outside the district's boundaries must include a percentage of residential customers and small commercial customers, based on load, comparable to the percentage of residential and small commercial customers in the county or counties where service is to be provided, based on load.

(3) Service by the district will be consistent with the intent of the state to avoid economic waste caused by duplication of facilities.

(4) Service by the district will include reasonable mitigation of any adverse affects on the reliability of an existing service by the electrical corporation.

(5) The district has established, funded, and is carrying out public purpose and low-income programs comparable to those provided by the current electric retail service provider.

(6) The district's tariffed electric rates, exclusive of commodity costs, will be at least 15 percent below the tariffed electric rates, exclusive of commodity costs and nonbypassable charges under Sections 367, 368, 375, 376, and 379, of the electrical corporation for comparable services.

(7) The net unavoidable costs of power procurement by an electrical corporation will not be shifted onto the electrical corporation's remaining customers, but will be the responsibility of the electrical corporation's former customers being served by the district or of the district itself.

(8) The net unavoidable costs of power procurement by the Department of Water Resources will not be shifted to the electrical corporation's remaining customers, but will be the responsibility of the electrical corporation's former customers being served by the district or of the district itself. For each consumer, the net unavoidable costs of power procurement by the Department of Water Resources includes:

(A) The difference, if any, between the Department of Water Resources' total actual procurement costs incurred on behalf of the consumer during the term of service, including financing costs, and the rates collected on behalf of the Department of Water Resources from that consumer during the term of service.

(B) The Department of Water Resources' net unavoidable cost of future power procurement, including any financing costs, attributable to that consumer.

(9) Service by the district is in the public's interest.

(d) A district that obtains the approval of the commission under

this section to serve an area shall prepare an annual report available to the public on the total load and number of accounts of residential, low-income, agricultural, commercial, and industrial customers served by the district in the approved service area.

(e) The commission shall have jurisdiction to resolve and adjudicate complaint cases brought against a district by an interested party where the complaint concerns retail electric service outside the boundaries of the district and within the service territory of an electrical corporation. Nothing in this section grants the commission jurisdiction to adjudicate complaint cases involving retail electric service by a district inside its boundaries.

(f) A district may not offer service to customers outside of its district boundaries before offering service to all customers within its district boundaries.

(g) For the purposes of this section, "commission" means the Public Utilities Commission.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution. to read:

~~—31149.2. The hydroelectric powerplant or plants and transmission lines constructed pursuant to this article may be leased for operation by, or the power generated may be sold to, a public utility or public agency engaged in the distribution, use, or sale of electricity. The power generated may be used by a district for its own purposes, or for the production or transmission of water, but may not be offered for sale directly by a district to customers other than such a public utility or public agency. The power to acquire works and facilities does not include, and nothing in this article shall be interpreted to allow, the acquisition of property employed in the generation of hydroelectric energy for public utility purposes, except by mutual agreement between the district and the owner of that property.~~